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09/954,604	09/17/2001	Gerald R. Koefelda	RPC 0467 D	8855

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EXAMINER

CHEN, JOSE V

ART UNIT PAPER NUMBER

3637

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/954,604
Filing Date: September 17, 2001
Appellant(s): KOEFELDA ET AL.

MAILED

AUG 23 2004

GROUP 3600

Konstantine J. Diamond (39,657)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06-01-04.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 14-18, 20-25, 28-43.

Claims 19, 26, 27 have been canceled.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 15, 25, 28-33, 36, 37, 43 stand or fall together, claims 14, 16-18, 20-23, 30-35, 42 stand or fall together, claims 38-41 stand or fall together, but each of the above groupings and claim 24 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

1,408,114	MATHIEU	02-1922
5,606,921	ELDER ET AL	03-1997
6,234,088	BREDAL ET AL	05-2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 14-18, 20-25, 28-37, 42, 43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bredal et al in view of Elder et al. The patent to Bredal et al teaches structure substantially as claimed including a top deck having a peripheral edge, foot members (609) including a cutout (u-shape section), the legs positioned at a corner (side), the only difference being that there is not a non-peripheral foot member. However, the patent to Elder et al teaches the use of a non peripheral foot member to provide additional support and rigidity to be old. It would have been obvious and well within the level of ordinary skill in the art at the time of the invention was made to modify the structure of Bredal et al to include an additional foot member to provide additional support, as taught by Elder et al since such structures are conventional alternative members used for the same intended purpose of providing support for a pallet structure, thereby providing structure as claimed. The size of the pallet would not deter one of ordinary skill in the art to use known knowledge and engineering principles, i.e. the addition or subtraction of supports, the span between the supports, the dimension of supports are known principles of bridge design, beam construction, column construction, such principles routinely taught in engineering courses. The use of such

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well known principles to determine the addition of supports to prevent buckling or failure of structures is well within the level of ordinary skill in the art. The use of molded and integral construction is well known in the manufacture of pallets.

Claims 38-41 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bredal as applied to the claims above, and further in view of Mathieu. The patent to Bredal teaches structure substantially as claimed as discussed above including feet member with cutout portions facing outwardly and adjacent a corner, the only difference being that the cutout is not symmetrical along a diagonal line. However, the patent to Mathieu teaches the use of providing an outwardly facing cutout at a diagonal of a structure to aid in stacking or nesting to be old. It would have been obvious and well within the level of ordinary skill in the art at the time of the invention was made to modify the structure of Bredal to include the cutout about a diagonal, as taught by Mathieu since such structures are conventional structure used in the same intended purpose of providing nestable supports, thereby providing structure as claimed. The use of molded and integral construction is well known in the manufacture of pallets.

(11) Response to Argument

In response to appellant's remarks regarding the rejection of claims 14-18, 20-25, 28-37, 42, 43 that there is no motivation for adding a non-peripheral foot or a side peripheral foot to the Bredal pallet because the examiner appears to have shifted the burden of proof to the Applicant on the issue of obviousness, by saying, the size of the pallet would not deter one of ordinary skill in the art to use known knowledge and engineering principles. Applicant is not required to prove that one of ordinary skill in the

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art would be deterred from the claimed invention. Rather, the Examiner must point to some suggestion in the prior art (or in the general knowledge of those skilled in the art) for making the proposed modification. The size of the Bredal quarter-pallets and the stated intended use of the Bredal quarter-pallets negate the motivation proposed by the Examiner, note the following. The examiner has pointed to a motivation and suggestion in the art as stated above. Further, it is noted that Bredal et al teaches an invention that "relates to a single sheet pallet....The invention further relates to an assembly comprising four such pallets". The Bredal patent does not teach or state that the principles known or taught for a single pallet cannot be used in the formation of a multiplicity of pallets. Additionally, the addition of supports does not prevent or destroy any of the teachings of Bredal.

In response to appellant's remarks regarding the rejection of claims 38-41 that the "this hypothetical motivation ("The Examiner's motivation for the proposed modification is that it would "aid in stacking or nesting.") does not exist because the quarter-pallets of Bredal are already stackable and nestable, as is shown in Figure 9 of Bredal. The cutouts do not need to be symmetrical about the diagonal in order to stack or nest. Therefore, claims 38-41 are not obvious over Bredal and Mathieu." note the following. The motivation of the modification is the knowledge that both structures teach conventional alternative structures (the supporting structures including cutouts), used for the same intended purpose and environment(to aid in nesting or stacking of structures). To provide a known alternative structure with no structure to prevent or destroy such modification would have been obvious and well within the level of ordinary



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skill in the art, thereby providing structure as claimed. It is repeated that the Bredal patent does not teach or state that the principles known or taught for a single pallet cannot be used in the formation of a multiplicity of pallets.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

José V. Chen
Primary Examiner
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Chen/jvc
August 17, 2004

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